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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/406,477	09/27/1999	CHARLES E. HILL	45607-65055	1650

25267 7590 09/13/2004

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EXAMINER
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ZURITA, JAMES H

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/406,477

**Applicant(s)**

HILL, CHARLES E.

**Examiner**

James H Zurita

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 59-69 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Newly submitted claim 59-69 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the new claims are directed to receiving a first and second request, first and second images.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 59-69 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***37 CFR 1.131 Affidavit***

The affidavit/declaration of Charles E. Hill filed on 27 May 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Wiecha and Johnson references for the following reasons:

#### **Failure to establish diligence**

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Wiecha and Johnson references to either a constructive reduction to practice or an actual reduction to practice. In the present case, the applicant's have not properly established diligence through sketches, notebook entries, etc. for the entire time from prior to the date of the Wiecha and Johnson references up to the date of reduction to practice. "An applicant must account

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for the entire period during which diligence is required." *Gould v. Schawlow*, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966). Statements that the subject matter "was diligently reduced to practice" is not a showing "but a mere pleading." *In re Harry*, 333 F.2d 920, 923, 142 USPQ 164, 166 (CCPA 1964). Diligence requires that Applicants must be specific as to dates and facts. *Kendall v. Searles*, 173 F.2d 986, 993, 81 USPQ 363, 369 (CCPA 1949). (Also see MPEP 2138.06).

#### **Lacks NAFTA/WTO allegation**

The affidavit or declaration must contain an allegation that the acts relied upon to establish the date prior to the references or activity were carried out in this country or in a NAFTA country or WTO member country. (See MPEP 715.07(c) and 35 U.S.C. 104).

#### **Failure to establish conception**

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Wiecha and Johnson references. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). In the present case, the applicants have not properly supported their conception of the invention through sketches, notebook entries, programming code, etc. In particular, the evidence submitted by the applicants fails to teach or render obvious

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the claimed limitation of creating a physical necktie by transmitting the digital necktie to a printing means.

**Failure to reduce to practice (Actual)**

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Wiecha and Johnson references. An actual reduction to practice requires a showing of the invention in a physical or tangible form that shows every element of the count. See *Wetmore v. Quick*, 536 F.2d 937, 942, 190 USPQ 223, 227 (CCPA 1976). For an actual reduction to practice, the invention must have been sufficiently tested to demonstrate that it will work for its intended purpose, but it need not be in a commercially satisfactory stage of development. If a device is so simple, and its purpose and efficacy so obvious, construction alone is sufficient to demonstrate workability. *King Instrument Corp. v. Otari Corp.*, 767 F.2d 853, 860, 226 USPQ 402, 407 (Fed. Cir. 1985); (Also see MPEP 715.02 and 715.07).

In the present case, the materials submitted by the applicants fails to show the claimed limitations of claim 21, for example:

- storing product data including image data and textual data related to a plurality of products in a memory of the vendor's computer;
- transmitting product data related to a plurality of products from the vendor's computer to the remote computer for display on the display;
- receiving a user input from the remote computer selecting at least two products from the product data displayed on the display;
- determining the product data stored in the memory of the vendor's computer that is associated with each of the at least two selected products; and
- transmitting display instructions from the vendor's computer to the remote computer to permit the remote computer to combine the image data and the textual data related to the at least two selected products from the product data received from the vendor's computer to display including both image data and textual data product information related to the at

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least two selected products for a side-by-side comparison on the display of the remote computer.

As to claim 32, the materials fail to show, for example,

- means for storing product data including image data and textual data related to a plurality of products in a memory of the vendor's computer;
- means for transmitting product data related to a plurality of products from the vendor's computer to the remote computer for display on the display;
- means for receiving a user input from the remote computer selecting at least two products from the product data displayed on the display;
- means for determining the product data stored in the memory of the vendor's computer that is associated with each of the at least two selected products; and
- means for transmitting display instructions from the vendor's computer to the remote computer to permit the remote computer to combine the image data and the textual data related to the at least two selected products from the product data received from the vendor's computer to display including both image data and textual data product information related to the at least two selected products for a side-by-side comparison on the display of the remote computer.

As to claim 41, the materials fail to show, for example,

displaying a plurality of product images on the display;  
providing product image review boxes on the display for a side-by-side comparison of selected product images;  
receiving a user input selecting a product image from the plurality of product images displayed on the display; and  
displaying the selected product image in one of the review boxes for a side-by-side comparison with at least one other selected product image.

As to claim 50, the materials fail to show, for example,

a computer including a display, a memory, and an input device;  
means for displaying a plurality of product images on the display;  
means for providing product image review boxes on the display for a side-by-side comparison of selected product images;  
means for receiving a user input selecting a product image from the plurality of product images displayed on the display', and means for displaying the selected product image in one of the review boxes for a side-by-side comparison with at least one other selected product image.

### ***Claim Objections***

Claim 29 is objected to because of the following informalities. Claim 29 reads:

29. (Previously Presented) The method of claim 21, further comprising transmitting data related to a plurality of product categories from the vendor's computer to the remote computer for display on the display,

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receiving a user input selecting a product category from the plurality of product *catalogs* displayed on the display, and wherein the step of transmitting product data related to the plurality of products includes product data related to the selected product category.

This appears to be a typing error, since claims 21 and 29 refer to a plurality of products and to a plurality of categories only.

29. (Previously Presented) The method of claim 21, further comprising transmitting data related to a plurality of product categories from the vendor's computer to the remote computer for display on the display, receiving a user input selecting a product category from the plurality of product *categories* displayed on the display, and wherein the step of transmitting product data related to the plurality of products includes product data related to the selected product category.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

It is noted that the grounds for rejection are unchanged. Nevertheless, the Examiner will take this opportunity to consolidate prior rejections to further clarify the record, and so that applicants may more easily identify particular features of their invention that are unpatentable over the cited references and knowledge generally available to those of ordinary skill in the art.

**Claims 21-26, 28, 32-35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiecha (US 5,870,717) in view of Johnson (US 6,067,525).**

Wiecha discloses a system enabling a user to purchase an item from a supplier using an electronic catalog, via a communications network (a catalog inherently comprises the storing of product data including image data and textual data relating to a

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plurality of products in a memory of the vendor's computer, transmitting the product data related to a plurality of products from the vendor's computer to the remote computer for display on the display) (Abstract).

A user can browse, search and order from the electronic catalog (receiving a user input to order a selected product displayed on the display and automatically generating an order form for the selected product, transmitting the order form from the remote computer to a vendor's computer wherein the order form includes a plurality of selected products) (Col 7, Line 611. A user finds his/her desired products using any number of searching techniques: keyword, manufacturer or index (transmitting data related to a plurality of product categories from the vendor's computer to the remote computer for display on the display, receiving a user input selecting a product category from the plurality of product categories displayed on the display, and wherein the step of transmitting product data related to the plurality of products includes product data related to the selected product category) (Col 8, Line 57). Once the user has narrowed his/her choices down, he/she can select the compare function. Up to four different products can be compared (receiving a user input from the remote computer selecting at least two products from the product data displayed on the display) (Col 8, Line 60)

Wiecha does not explicitly disclose:

Transmitting display instructions from the vendor's computer to the remote computer to permit the remote computer to combine the image data and the textual data related to the at least two selected products from the product data received from the vendor's computer to display including both image data and textual data product information related to the at least two selected products for a side-by-side comparison the display of the remote computer Wherein the product data related to the at least two selected products is displayed in at least two side-by-side review boxes



Johnson teaches an electronic sales system. The context of Johnson's system is dissimilar to that of Wiecha. Both inventions however are generally suited to facilitate sales to an end consumer by presenting data, both image and text, about a plurality of products. Johnson specifically teaches a product module that is designed to present a variety of product information to the customer using a combination of text and graphic illustrations, motion, video and sound (display instructions indicate a format of the textual data and a display location of the image data relative to the textual data) (Co1 12, Line 231. The product module also incorporates a competitive comparison module.

The module presents one vendor's product information side by side with a competitor's product information. This module supports various states including graphic states (e.g. still, animation, movies, sound, white papers, etc.) and has the capability of importing selected standard graphic formats as well as using selective presentation software output (integrating text and image data in comparing selected products) (Co1 12, Line 431.

In that Wiecha already incorporates the capability of displaying image and text data for a plurality of products individually, it would have been obvious to modify the system to expand this functionality to the compare mode - i.e. combining image and text data in side-by-side comparisons - as taught by Johnson in order to provide the user with a more effective means of making an educated and rational buying decision.

Wiecha also does not explicitly disclose a scroll box displayed on the display which includes product data related to the plurality of products. Scroll boxes are notoriously well known in the art of electronic display as a means of allowing a user to

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view an object/image that goes beyond the boundaries of the display. The implementation of such a device is merely one of many means that the administrator/designer would have to implement to allow a user to view an image in its entirety.

Therefore, it would have been obvious to one skilled in the art at the time to modify Wiecha to incorporate a scroll bar, or any other means of allowing the user to view a truncated image.

**Claims 27, 29-31, 36, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiecha (5,870,717) in view of Johnson (US 6,067,525), as applied in claims 21 and 32, in further view of Yoda (US 5,515,268).**

The combined system of Wiecha/Johnson does not explicitly provide for: Transmitting display instructions including transmitting a map from the vendor's computer to the remote computer Wherein the display instructions permit integration of the product data with the selected background image on the display Wherein the product image and the selected background image are integrated based on a map transmitted to the remote computer from the vendor's computer Yoda teaches a system and method of ordering products where on a monitor display the product image is superimposed on the customer's body image (integration of product data with a selected background image on the display).

Yoda specifically seeks to address the problems of remote ordering - i.e. consumers cannot see, touch or feel their potential purchases and therefore cannot make the most informed buying decisions (Col 1, Line 30j).

**Claims 41-47 and 50-56 are rejected under 35 U.S.C. 103(a) as unpatentable over Wiecha (US 5,870,717) in view of Cameron (US 5,592,378).**

Regarding claims 41 and 50, Wiecha teaches a method and apparatus for presenting a plurality of product images for review by a user on a computer including a display, a memory, and an input device, the method and apparatus comprising displaying a plurality of product images on the display (col. 3, lines 10-12 and 19-21 ); providing a side-by-side comparison of selected products (col. 3, line 18-24), receiving a user input selecting a product image from the plurality of product images displayed on the display (col. 3, lines 18-19), and displaying the selected products for a side-by-side comparison with at least one other selected product (col. 3, lines 18-24).

Regarding claims 41 and 50, Wiecha does not specifically teach providing product image review boxes on the display for facilitating the side-by-side comparison of the product images.

However, Cameron teaches this limitation (see Figures 18 and 19). At the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Wiecha, to include providing product review boxes for facilitating a side-by-side comparison of selected product images because product review boxes would clearly segregate the selected items and provide a more user-friendly interface than that taught by Wiecha.

Regarding claims 42 and 51, Wiecha and Cameron teach all the limitations discussed under claims 1 and 10 above. Further,

Regarding claims 42 and 51, Wiecha does not specifically teach the displaying a plurality of product images by displaying a scroll box on the display which includes the plurality of product images from a selected product category. However, Cameron teach the use of a product box to present a user with product names from the selected product category (col. 13, lines 64-67, col. 14, lines 1-6., and Figure 18). As for scrolling and the use of product images within the product box, Official Notice is taken that these limitations were notoriously well-known in the art of product display. Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Wiecha with both Cameron's use of a product box for the display of products from a selected category, and the well-known concepts of the of scrolling and the use of product images in order to provide users with a easier means by which to browse and select products offered by vendors.

Regarding claims 43 and 52, Wiecha and Cameron teach all the limitations discussed under claims 42 and 51 above.

Regarding claims 43 and 52, neither Wiecha nor Cameron specifically teach displaying a plurality of product images wherein the product images in the review boxes are larger than the product images in the scroll box. However, Official Notice is taken that this limitation was notoriously well- known in the art of product display at the time of the applicant's invention. One of ordinary skill in the art would have been motivated to modify the method taught by Wiecha and Cameron to include displaying a plurality of product images that are larger than the product images in the scroll box because this

combination would permit a user to quickly browse products contained within the scroll box.

Regarding claims 44 and 53, Wiecha and Cameron teach all the limitations discussed under claims 1 and 10 above.

Regarding claims 44 and 53, Wiecha does not specifically teach displaying a plurality of product images wherein selected product images are displayed in the next available review box until all the review boxes are filled with product images, and wherein the next selected product image replaces the product image in one of the review boxes. However Cameron teach this limitation (col. 13, lines 53-67., and col. 14, lines 1-21). At the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Wiecha to include a method of displaying a plurality of product images wherein selected product images are displayed in the next available review box until all the review boxes are filled with product images, and wherein the next selected product image replaces the product image in one of the review boxes. One of ordinary skill in the art would have been motivated to modify Wiecha in this manner in order to allow a user to perform a side-by-side comparison of a greater number of products.

Regarding claims 45 and 54, Wiecha and Cameron teach all the limitations discussed under claims 44 and 53 above. Further,

Regarding claims 45 and 54, neither Wiecha nor Cameron specifically teach presenting a plurality of product images wherein the user selects the review box in which to replace the product image after all the review boxes are filled with product

images. However, the examiner takes Official Notice that selecting a review box in which replace a product image was notoriously well-known in the art of product display at the time of the applicant's invention.

Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Wiecha and Cameron et al., to include a step wherein the user selects a product review box in which to display the next-selected product image.

One of ordinary skill in the art would have been motivated to modify Wiecha and Cameron to allow a user to select a product review box for display of the next-selected item as this would allow the user to retain product images of interest for comparison with the next-selected product image.

Regarding claims 46 and 55, Wiecha and Cameron teach all the limitations discussed under claims 1 and 10 above.

Regarding claims 46 and 55, Wiecha further teaches receiving a user input to order a selected product displayed on the display, and automatically generating an order for the selected product (col. 3, lines 30- 34).

Regarding claims 47 and 56, Wiecha and Cameron teach all the limitations discussed under claims 46 and 55 above.

Regarding claims 47 and 56, Wiecha fudher teaches the step of automatically transmitting the order form for the selected product from the computer to a vendor's computer located at a remote location (col. 3, lines 30-34).

**Claims 48 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over WIECHA (US 5,870,717) in view of Cameron (US 5,592,378) as discussed under claims 41 and 50 above, and further in view of MIZOKAWA (US 4,530,009).**

Regarding claims 48 and 57, Wiecha teaches all the limitations discussed under claim 1 above. Wiecha does not specifically teach a method or apparatus wherein the plurality of product images includes at least one product image and at least one background image, and the step of displaying the selected product image includes integrating a product image with a background image to provide a customized product image on the display. However, Mizokawa teaches this limitation (col. 3, lines 35-49., see also abstract). At the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Wiecha, to include creating a customized product image as taught by Mizokawa because the addition of this step would allow a user to perform side-by-side comparison of one or more customized product images whose components may vary based upon user input.

**Claims 49 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiecha (US 5,870,717) in view of Cameron (US 5,592,378) and MIZOKAWA (US 4,530,009) as discussed under claims 48 and 57 above, and further in view of Gray et al. (US 4,661,811).**

Regarding claims 49 and 58, neither Wiecha, Cameron nor Mizokawa specifically teach a method or apparatus wherein the product image and the selected background

image are integrated based on a map. However, Gray et. al teach this limitation (col. 1, lines 11-13., and col. 2, lines 20-36).

The examiner takes official Notice that transmitting a map or similar instructions to a user computer from a vendor's computer at a remote location was notoriously well-known in the art at the time of the applicant's invention.

Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Wiecha, Cameron and Mizokawa, to include the use of a map to integrate the product and background image wherein the map is transmitted from a remote location. Transmitting a map, from a remotely located vendor, for integrating the product and background images would allow a vendor to provide a suggested product composition thereby allowing the user to create a customized product based upon a vendor's guidelines.

#### ***Response to Amendment***

Applicant filed an amendment on 28 May 2004. With this amendment, applicant added claims 41-69.

Claims 21-69 are pending, of which claims 59-69 are withdrawn from consideration, as explained in Elections/Restrictions.

#### ***Response to Arguments***

Applicant's arguments filed 28 May 2004 have been fully considered but they are not persuasive.



The affidavit/declaration of Charles E. Hill filed on 27 May 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Wiecha and Johnson references for reasons stated above. The rejections based on Wiecha and Johnson are maintained.

Claims 41-58, which applicant refers to as "generally identical" to originally presented and cancelled claims 1-18, are rejected on the same grounds and references as claims 1-18. Please note that applicant cancelled claims 1-18 without responding to the Examiner's final rejection of those claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

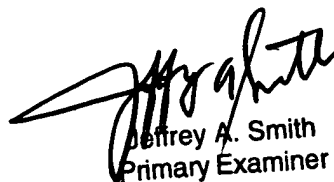
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 703-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J2  
**James Zurita**  
**Patent Examiner**  
**Art Unit 3625**  
4 September 2004

  
Jeffrey A. Smith  
Primary Examiner